ENERGIAKLUB
CLIMATE POLICY INSTITUTE
APPLIED COMMUNICATIONS

GREENPEACE

Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

COMMUNICATION TO THE AARHUS CONVENTION'S COMPLIANCE COMMITTEE

Content

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II. Party concerned

Name of the State Party concerned by the communication: Hungary (has ratified the Convention on 3rd of July, 2001 with no declarations or reservations)

III. Facts of the communication

(*Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a breach of the provisions the Convention:*)

1. Breach of the provisions of Article 3 and 4 in connection with the Teller Project, a plan to extend the Paks Nuclear Power Plant in Hungary

1.1 On the **24th of June, 2010** András Perger the project manager of the Energiaklub requested information from János Süli, director of the Paks Nuclear Power Plant Shareholder Company (hereinafter: the Company). The requested information encompassed information on the total expenses of and the contracts concluded so far within the frames of the Teller Project; a State project handled by the Company in connection with preliminary and preparatory measures and studies about the planned extension of the Paks nuclear power plant. The requestor referred to an earlier court case where the same data were requested and the court instructed the parties that the wielder of the data was the Company. The request was based on Article 19 and 20 of Act LXIII of 1992 (hereinafter: Data Protection Act, see in Annex1).

1.2 In its response on the **5th of July, 2010** the Company pointed out that according to the relevant provisions of the Data Protection Act I. public information can only be requested from public authorities or other organisations that perform public functions. The Company alleged that they do not meet this criterion and also referred to Article 5(2) of Act CVI of 2007 on State Property (see in Annex 2) that also defines the term of organisations that perform public functions. The key element of this definition is that those companies qualify as performing public functions that handle state properties, while the Company is operated upon its own private funds. Finally, the letter of the Company referred to the fact that it actively had disseminated some information on the Teller Project that was extended to the Energiaklub, too. We note that this general information did not contain any information on the expenses of the preparation of the extension of the power plant and on the money spent on the firms that took place in the preparatory studies and other planning activities. We also would like to underline that planning the extension of the Paks nuclear power plant took place within the so called Teller Project that is a state planning activity, even though it was initiated by the Company itself, in order to prepare the 2009 decision of the Parliament on that matter. While the planning was financed by the Company itself, too, the Company is directly or indirectly 100% State owned. Therefore the Company had to be qualified as a wielder of public data both according to the terms of the Data Protection Act I and according to the definition of the Act on State Property.

1.3. On the **11th of August, 2010** the Energiaklub repeatedly requested the Company for the mentioned data. It referred to the general practice of the Hungarian courts (mentioning a concrete court decision, that explains this) according to that all the State owned companies count to perform public functions, while the Company is State owned. As a State owned company the Company *ipso facto* handles State resources, therefore it qualifies as performing public functions even according to the Act on State Property.

1.4. In its response on the **30th of August, 2010** the Company denied the requested information again, on the basis that according to the Act on State Property only those companies had to be considered to handle State property that are directly controlled by the National Property Wielding Shareholders' Company or listed in the annex of the Act. Since none of these conditions are met in the case of the Company, it cannot be called a Company that handles State property. We note, however, that the second letter of the Company failed to respond to the arguments of the Energiaklub concerning the relevant court practice.

1.5. The Energiaklub turned to the competent court on the **15th September, 2010**. The Szekszárd City Court in its sentence No. 27.G.40079/2010/14 dismissed the request of the civil organization with the following reasoning: while the access to public interest information is a basic constitutional right according to the Hungarian Constitution, this right can only be served as far as other basic constitutional rights are not infringed. Even if the court did not see any concurrent constitutional rights, and also underlined that the data in connection with the Teller Project public interest ones it held that the Company is not an organization fulfilling public interest responsibilities. Taking into consideration the definition of the state property according to Article 1(2) of the Act on State Property (see in Annex3) and the Annex of the same Act that enlists those state owned companies whose status as state owned company is planned on longer run, the court arrived at the conclusion that the Company does not handle state property, therefore falls outside the transparency requirements of the Act on State Property. As concerns the other issue, whether the Company is performing public tasks, the court, not finding concrete legal definition on the term "public responsibility" started out from the general court practice and the legal literature. According to these, the minimum level of public responsibility is what is *established by any laws as tasks of the State and the municipalities*. However, the court practice prefers an even broader definition, namely the *public interests and public goals* the tasks in question are related to, shall be taken into consideration, too. The court held also useful the definition of the *organisations under the State budget*, according to paragraphs 1(2), 9(1) and (2) and 87 of Act XXXVIII of 1992 on the State finances (see Annex4). According to these rules only such organisations operate in public interests that perform their public interest tasks as their basic responsibility, with no profit goals and under the supervision of a State body, solely operating on State Budget. Based on these legal criteria, the court did not accept that the Company performed public responsibilities and dismissed the request of the Plaintiff.

We note that in our standpoint the definition of state property or the list of those companies that should stay within state property in longer run should not determine the question whether

a hundred percent state owned company handles state property or not. A state owned company *ipso facto* handles state property, therefore all the higher level standards of transparency attached to this fact by the relevant laws shall prevail. This shall be true even in that case when the company cannot be qualified as a company an organisation fully under the State budget. We also note that the definition of organisations belonging to the State budget mostly overlaps with the definition of the governmental organisations, rather than that of the other organisations performing public responsibilities or functions, the category the Plaintiff referred to. In connection with the question of performing state responsibility we have to refer back also to the two earlier Parliamentary decisions from 2008 and 2009 (see in Annex5 and Annex6) and in Point 4 below) that established the task to examine the possibilities of the extension of the Paks nuclear power plant. The Teller Project (and a preliminary environmental assessment allegedly performed within its frames) was the single activity in that topic no other similar examinations took place, therefore there is no room for any other conclusions that the Teller Project was the implementation of the instructions from the Hungarian Parliament.

1.6. In its **27th April, 2011** decision No. 13.Gf.40.024/2011/4 the second instance Tolna County Court has changed the decision of the Szekszárd City Court and ordered to extend all the requested data to the Plaintiff, with the possibility to blacken any data on technical solutions. The starting point of the explanation part of this decision was that the Teller Project together with the Lévai Project (see below in Point 3) was the implementation of the two Parliamentary decisions on the preliminary consent of the Parliament to the extension of the Paks nuclear power plant. Within the frames of the general mandate from the Parliament the defendant had performed preliminary environmental, social, economic and technical examinations and analyses. In performing these tasks the Company had concluded expert contracts, therefore wielded the relevant public interest data in the contracts. As concerns the question of handling State property, the second instance court established that the Company belongs to a holding that is led by the MVM Hungarian Electricity Ltd., a non-disputably State company and the State exerts control over the activities of the Company. In the economic activities of any directly or indirectly State owned companies the social interests shall prevail, therefore the transparent operation of such companies according to the relevant State standards shall be ensured. The County court arrived at a similar conclusion through examining the relevant provisions of Act CXVI of 1996 on Nuclear Energy, too, where the prevailing State interests determine the content of the legal rules, therefore a company that operates a nuclear power plant is performing State interests, *per se*. The Court underlined that the request for data from the Plaintiff targeted primarily not technical information but information about handling and responsible management of State funds aiming the preparation of the extension of the Paks nuclear power plant.

1.7-8. Based on the second instance decision with full legal force, on the **30th of May, 2011** the Company has sent certain data to the Energiaklub. After studying the material received, on the **20th of June, 2011** the civil organization sent an other request for the full set of data. The Energiaklub noticed that the Company failed to send data on the total expenses of the preparation of the Teller Project (for instance the administrative cost of the Company and expenses of publications were missing from the price list) and also that the Company has

blackened some information that did not fall into the category of sensitive technological information at all. The Company also failed to send the Annexes of the contracts in four instances with the detailed descriptions of the tasks included in the contracts. Taking into consideration of the process of the work the Energiaklub raised a new request for information, namely asked the papers and studies produced under the contracts extended to it.

1.9. On the **4th of August 2011** the Company sent the majority of the missing data, including two documents covered by the new request for information. The Company in the same time promised to send the missing documents (results of the contracts) in the coming month.

1.10-11. While some materials were actually sent by **30th of September, 2011**, the Energiaklub having worked through them had to realize that some major documents are missing. In their letter to the Company they requested 17 kinds of documents, amongst others the feasibility study of the extension of the nuclear power plant, and the strategy for depositing the high level radioactive waste of spent fuels and other wastes. The letter of the Energiaklub also raised that the Company had blackened or omitted whole pages and even chapters from the sent documents.

1.12-18. With an accompanying letter of **29th of November, 2011**, the Company has sent further elements of the information requests to the Energiaklub. However, partly because of the significant delay, compared to the maximum 15 days deadline and the missing 7 pieces of data the Energiaklub issued a court complaint on the **30th of November, 2011**. In its decision No.27.G.40.077/2011/5. On the **11th of January, 2012** the Szekszárd City court obliged the Company to send all the requested information to the Plaintiff, similarly to the relevant County Court decision earlier in the case. Out of procedural faults the second instance Tolna County Court has annulled the first instance decision and instructed the City Court to repeate the procedure on **4th of April, 2012**. In the repeated procedure the city court in its decision on the **25th of March, 2013** ordered the Company to send 6 documents out of the requested 7, while in the second instance in its substantial decision, the Tolna County Court on the **19th of June, 2013** obliged the company to send 5 documents out of the requested 7 to the Energiaklub. The pieces of information to be withheld contained an overwhelming majority of business secret (know-how) that would not be possible to separate from the rest of the documents. These documents were sent to the Energiaklub on **2nd August, 2013**. (see the translation the correspondence between the Energiaklub and the Company under Annex 7)

<u>2. Breach of the provisions of Article 3 and 4 in connection with the Lévai Project, a plan to extend the Paks Nuclear Power Plant in Hungary</u>

2.1. On the **18th of January, 2011** the Energiaklub asked Zoltán Baji, the chief director of the Hungarian Electricity Company (hereinafter: MVM) to extend to her the information concerning the Lévai Project (a continuation of the Teller Ede project), more closely: the expenses, the timing, the results so far, the participating organisations within the MVM Holding and outside of it and also the list of contracts (together with the remuneration included in them) in connection

with the Project. The legal basis of the request was Article 20(2) of the Data Protection Act (see in Annex1).

2.2. In its response on the **2nd of March, 2011**, MVM referred to Article 19/A(1) of the Data Protection Act, pointing out that the Lévai Project is still an ongoing one, therefore all the requested qualifies as "*data under preparation*" that means that any request concerning their extension is premature. MVM has also referred to Article 19(6) thereof, alleging that the requested data are *business secret*. Furthermore the data wielder company pointed out that according to the relevant court practice they cannot be obliged to produce *new set of data* solely to satisfy the information request by compiling lists, selections or summaries out of the existing data.

2.3. On the **11th of September, 2011** the Capitol City Court admitted the request of the Energiaklub as a Plaintiff against MVM and obliged the defendant to give out all the requested information with blackening out the secret part if necessary (the court complaint was issued on the **4th of March** that year). The court took into consideration that the Lévai Project is the continuation of the Teller Project and that in the legal disputes in connection with data servicing in the previous court procedures the courts, including the higher level court have already expressed their views. According to the court the defendant did not acted *bona fide* (in good faith) when it denied even its data wielder status in the case, although in several similar earlier cases courts have established it with legal force. As concerns the course of completion argument of the defendant, the court held that the defendant, having the burden of proof on its shoulder in that question, failed to prove beyond reasonable doubt that serving the requested data would have endangered the uninfluenced operation of MVM or the free expression of opinion of the officials concerned in the internal decision-making procedure. Finally, the business secret argument of the defendant was dismissed on the basis that the defendant failed to prove that servicing the requested data would have endangered its financial, economic or market interests even if it had performed all the necessary precautionary measures in this respect. (see the full translation of the decision of the Capitol City Court in Annex8)

2.4. On the **16th of February, 2012** the Second Instance Court has consented with the first instance decision, while slightly modifying it in respect to the data concerning the time schedule of the Lévai Project that was voluntarily forwarded to the plaintiff by the defendant. The second instance court accepted the explanations of the Capitol City Court in this case.

2.5-6 While on the **2nd of March** MVM has sent certain data, the Energiaklub noticed that within the category of the results of the Lévai Project MVM sent only the list of the documents resulted from the contracts under the Project but not the documents themselves. On the **10th of April, 2012,** therefore, it sent another letter of information request to MVM about this and also asked to send the new versions of some outdated data had been sent previously and also contracts concluded and results, products ensuing from these contracts, all that were produced after the time the courts could take into consideration in the litigation procedure.

2.7-8. Since MVM has sent some documents, but not all, upto **November, 2012** the Energiaklub had to send several other request letters until it received all the documents. At that point MVM denied to send the rest of the documents, referring again to business secret and especially to know-how. Right after receiving the last letter from MVM the Energiaklub turned to the National Data Protection Agency for authoritative advice in the case. By **March, 2013** the Agency issued a statement, according to which MVM was obliged to issue all the rest of the requested documents – however, only a part of them were sent to Energiaklub. By the time in the **Autumn of 2013** the Energiaklub have received these documents, the expert studies in them were more than 2 years old already.

3. Breach of the provisions of Article 3 and 4 in connection with the implementation of a Governmental Decision about establishing a Council for the preparation of the extension of the Power Plant

3.1. On the **20th of March, 2013**, based on Article 28(1) of Act CXII of 2011 on Information Freedom (see Annex10) the Energiaklub requested information from the Prime Minister about the work of the Nuclear Energy Governmental Council, established by the Governmental Decision No. 1195/2012. (VI. 18) Korm. hat. The request for information encompassed the bylaws of the Council, the protocols, memoranda or reports about their meetings up to the time of the request and also any substantial, strategic decisions the Council has brought.

3.2. The answer to this request on behalf of the Prime Minister was sent to the Energiaklub on the **10th of April, 2013** by Orsolya Pőcze, deputy State Secretary responsible for energy in the Ministry of National Development. The requestor was informed that the Council has not gathered yet, therefore none of the requested documents exist yet. However, the deputy state secretary reminded her that according to Article 30/A(2) of the Act XLIII of 2010 on the Central administrative bodies and on the legal status of ministers and state secretaries (see in Annex11) stipulates that the Council is a preparatory body, therefore, considering Article 27(5) of the Freedom of Information Act (see in Annex10), its publicity is subject to the discretionary decision of the head of the organization.

3.3. On the **24th of July, 2013** Energiaklub sent a repeated request to the Prime Minister in which she asked for sending information about the secretariat of the Council and also about the implementation of the concrete tasks determined in the Governmental Decision, such as survey of the previous measures in connection with the preparation of the extension of the Paks nuclear power plant, furthermore all the tasks prescribed by the Governmental Decision, including preparation of several reports, submissions, proposals and communication strategy.

3.4. On the **15th of August, 2013** dr. Orsolya Pőcze, deputy state secretary answered the information request informing the Energiaklub that the Council was not set up yet, therefore the requested information did not exist. However, in line with the provisions of the Governmental Decision, the ministry had prepared a series of legislation whose drafts were sent to the Energiaklub for comments and also in this letter the deputy state secretary sent a study

on the deposition of small intensity radiation nuclear waste and informed the requester about the prospects of this matter. In the same time the deputy state secretary repeated her earlier arguments about the secrecy of materials in the course of completion.

3.5-6. On the **2nd of September, 2013** the Energiaklub repeatedly inquired about the implementation of the Governmental Decision and on the **7th of September, 2013** received a letter with the very same content as the earlier ones, just in a shorter form. (See all the correspondence under Point 3 in Annex9).

4. Breach of the provisions of Article 7 in connection with the decision-making procedure concerning the extension of the Paks nuclear power plant

4.1. The first decision-making procedures concerning the extension of the Paks nuclear power plant the general public could be aware of (at least the fact that the process resulted in some decisions) were the energy strategy of the country from 2008 and the 2009 decision on starting the preparation of the extension of the Paks nuclear power plant. Both decisions were formally accepted by the Parliament, but the actual planning activity took place in the work of the Government, by preparing the drafts of the Parliamentary decisions which were accepted by the legislative body without change.

4.2. The decision-making procedure of the extension of the Paks nuclear power plant started with the Governmental preparation of the decision of the Hungarian Parliament on the 2008-2020 Energy policy of Hungary with Decision No. 40/**2008. (IV. 17.**) Ogy. The Decision stipulates: "to start with the preparation of the decision on new capacity of nuclear power plant. Following the revealing of the professional, environmental and social facts and viewpoint the Government shall establish the necessity and conditions of the extension and also shall make suggestions to the Parliament in due time concerning type and the circumstances of the construction of the power plant".

4.3. Based on the 2008 Decision the Government started to prepare the Decision No. 25/**2009. (IV. 4.)** Ogy., according to which "Based on Article 7(2) of the Act CXVI of 1996 on nuclear energy, in harmony with the Parliamentary Decision No. 40/2008. (IV. 17.) Ogy., the Parliament gives its preliminary, principal consent to start the preparatory activities of establishing new block(s) at the site of the Paks nuclear power plant." This decision in fact determines the energy policy of the country for the coming decades.

4.4. While considering that the plan targets the extension of the Paks nuclear power plant, Article 43 of the Act LIII of 1995 on the General rules of Environmental Protection (see in the Annex13) obliged the Government to examine the environmental effects of such a plan, the Government failed to follow these provisions of the Hungarian law. Within the frames of the Teller Project the experts of the Paks nuclear power plant allegedly performed certain environmental evaluation studies, no information was available for the members and organisations of the public on the content and conclusions of these studies. We note that the

quoted legal source require a certain level of consultation with the public: the results of the environmental examination according to Articles 43-45 of the Environmental Code shall be sent to the National Environmental Council where 7 members delegated by the environmental NGOs can take part in the analysis and forming opinion on the plan. No formal environmental evaluation procedure took place in the case of the extension of the Paks power plant so far.

4.5. Upon the request of the Energiaklub, on the **12th of April, 2011,** the Office of the Hungarian Ombudsman for Future Generations issued its No. JNO-128/2010 analysis and a statement on the Governmental preparation work for the Parliamentary Decision No. 25/2009. (IV. 4.) Ogy. The Ombudsman Office in its summary letter to the Hungarian Government invited the Government to publish the results of the environmental impact assessments and strategic assessments, if any, and proceed further with the preparatory work of the extension of the power plant with the fullest inclusion of the general public (points 67-68 of the summary letter). The Ombudsman Office thereafter has received no answer from the Government on this matter.

IV. Nature of alleged non-compliance

(*Indicate whether the communication concerns a specific case of a person's rights of access to information, public participation or access to justice being violated as a result of non-compliance or relates to a general failure to implement, or to implement correctly, (certain of) the provisions of the Convention by the Party concerned*)

1-3. Breach of the provisions of Article 3 and 4 in connection with the Teller Project, a plan to extend the Paks Nuclear Power Plant in Hungary

The present complaint primarily addresses individual infringements of the rights of an environmental civil, non-governmental organization (NGO). However, this individual case might raise specific structural problems of the Hungarian regulation of access to environmental information, first of all the lack of solid legal practice ensuring the unambiguous use of the exemptions under Article 4(3)-(4) of the Convention and also the timely extending of the requested information. The proper institutional and procedural guarantees of the expedited procedures of handling access to information cases at the authorities and at the courts are also missing. Lack of effective tools for implementation of the decisions of these bodies represents an other structural legal failure to implement the Aarhus Convention in harmony with Article 3(1).

4. Breach of the provisions of Article 7 and 5 in connection with the decision-making procedure concerning the extension of the Paks nuclear power plant

A similar lack of coherent structures could be experienced in connection with the Governmental preparation of the two major Parliamentary decisions on the electricity production policy of

Hungary and on the start of the design of the extension of the Paks nuclear power plant. Here the infringements of the provisions of the Aarhus Convention are more of a general nature.
Even if we have to refer to the Parliamentary decisions in 2008 and 2009, these decision-making procedures are not excluded under the scope of the Convention. The subject of responsibility to perform the major public participation measures under Article 7 and 5 of the Convention lied at the Hungarian Government, during the administrative preparation of the decision of the Parliament. The kind of the activity (strategic planning and not legislation) and the determining role of the Government in it brings this issue within the frames of the Aarhus Convention in harmony with the explanation of Article 2 (2) of the Convention by the UN Implementation Guide[1]: "While clearly not meant to apply to legislative or judicial activities, it is nevertheless intended to apply to a whole range of executive or governmental activities, including activities that are linked to legislative processes."

We note that the internal logic of the Convention leads to the same conclusion: the next provision, Article 8 is about the preparation of decisions of legislative nature (generally binding, normative texts, contrary to Article 7 where the content of the decision-making procedures are of planning nature), where the decision formally is brought – similarly to our case – by the parliament, but the Parties to the Convention undertook ensuring public participation during the preparation of the decision.

V. Provisions of the Convention relevant for the communication

(*List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that the Party concerned is alleged to not comply with*)

1-3. Breach of the provisions of Article 3 and 4 in connection with the Teller Project and Lévai Project, plans to prepare the extension of the Paks Nuclear Power Plant in Hungary

In the previous Point IV we have referred to the structural problems of the Hungarian Party with the implementation of **Article 3(1).** We now continue with the structural arguments and come back to the Article 3(1) issue at the end, too.

The major infringement of the rights of the complaining NGO happened in connection with **Article 4, Paragraph (2)**, according to which the environmental information referred to the Convention shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. While after numerous exchanges of letters, repeatedly dealing with false arguments, spending time and large resources on legal remedies, the complainant has received many (but still not all) of the

[1] The Aarhus Convention: Implementation Guide, UN, 2013, http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf

requested information from the Company, the enormously long delay from the original request on the 24th of June, 2010 and the servicing of the information three years later on the Summer of 2013 made the information request almost totally superfluous and futile. This delay prevented the Energiaklub and the whole environmental civil sector and even the general public of Hungary to get access to information about the preparation of the plans to expand the Paks nuclear power plant. This lack of information paralyzed all of those who could give an opinion on the plan or protest against it – practically everyone was excluded from public participation. By the time the Energiaklub has received the requested information and try to work through and disseminate it, and activate the unbiased professional and environmental organisations, it was too late, all the pending issues were decided behind closed doors and the Prime Minister of the country concluded a contract with the Russian Federation that determines the energy policy and many other consequential social, economic and environmental issues for at least half a century in Hungary.

An indirect reference was made to **Article 3(3)** of the convention, when the deputy state secretary of the Ministry of National Development alleging that the delay in gathering the State Council on Nuclear Energy would prevent her from extending any of the requested information. In our view in a *bona fide* interpretation of the request, the data wielder should have realised that the information request did not focus solely of the work of this would be Council, but rather on the tasks this Council or in case of delay in its operation any other State body performed. The general decline of the request was a clear infringement of the right to access to environmental information according to the Convention.

A reference to **Article 4(3)c.** i.e. the *course of completion* argument has appeared in several places in the letters of the relevant authorities faced the information requests from the Energiaklub. If we consider the total picture of the case of the extension of the Paks nuclear power plant, we could say that in the decision-making procedure of major importance there were only secret procedures of preliminary preparation and the final decision itself, with no "real" decision-making procedure in between the two phases, where the facts and arguments could have been brought into light and been discussed by a wide range of experts, NGOs and the interested public.

Concerning the legal side of the argument, in our view, these authorities falsely identified the full range of the planning activities of the Government in a large investment as *ipso facto* activities in the course of completion. In case we accepted this kind of argument, the whole Article 7 and 8 of the Convention would become futile, since they are all about "preparatory" works for future actual activities. Contrary to this, the exemption from the accessibility of public data based on the course of completion argument is much narrower in our views, it actually (together with the argument concerning internal communications) protects only the rights of the administrative officials to express their professional views freely and without being under external pressure. As soon as a leader of a department with the right to issue documentations extends the document to other departments or bodies within or outside the administrative or quasi administrative organization in question, the course of completion arguments cannot be

used anymore. The Guide to the Aarhus Convention[2] expresses the same idea from an other angle: "However it is clear that the expression "in the course of completion" relates to the process of preparation of the information or the document and not to any decision-making process for the purpose of which the given information or document has been prepared."

Also we see infringement of **Article 3 Paragraph (1)** of the Convention, because Hungary has seemingly failed to take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access to justice provisions in the Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention. While there are some weak legal tools to enforce the substantially proper access to environmental information rules of the Hungarian data protection rules, they are not effective enough. Especially the expedited nature of the legal remedies in cases of access to environmental information are not strongly enough sentenced and enforced in the Hungarian legal system. While the rules concerning access to public interest information stipulates that the court procedures shall be expedited, these rules are not broken down in the detailed legislation concerning general court procedures and the details of the general rule were not worked out in the Hungarian legal system. Also we could see that the court practice is dubious in connection with the course of completion argument – this structural failure might prevent an NGO or a local community from exercising their rights to environmental information once they don't have enough resources to continue the legal remedies until they achieve a favourable decision, a decision which is actually in true harmony with the Aarhus Convention.

4. Breach of the provisions of Article 7 and Article 5 in connection with the decision-making procedure concerning the extension of the Paks nuclear power plant

The Hungarian Government prepared two decisions for the Parliament that decided on the basic direction of the long term development of the country's energy supply and a wide range of social, economic and environmental issues. The Government further outsourced the work of determining the details of the plan to lower level bodies such as the MVM and the closely interested Paks nuclear power plant Company. This planning procedure that started in 2008 and 2009 determined the path for the energy policy of the Government and led to the conclusion of the Russian-Hungarian international contract on building further blocks of the nuclear power plant in Paks. Contrary to the rules of **Article 7** of the Convention the Hungarian Party did not endeavour to provide any opportunities for public participation in this matter.

Furthermore **Article 5(7)** of the Convention stipulates that each Party shall publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals. We are at the opinion that there are very few if any subjects of State decision-

[2] http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf

making procedures that are more important major environmental policy decision than the main factors of the energy policy of a country. All the environmental risks and hazards and the related social and economic burdens of the selected path of electricity production will be born by the population of the country, therefore the spirit and the letter of the Aarhus Convention would have demanded a very active information dissemination policy in connection with the plans of determining its major energy policies and the development of nuclear energy sources from the side of the Hungarian Party.

Naturally, the infringements of Article 4 and 5 on access to information on one hand and the infringements of Article 7 on taking part in the decision-making procedure on the other hand are interrelated. Especially, we could see that excluding the public from the relevant national plans of energy development and the extension of the nuclear energy capacity of the country and also withholding the relevant information as far as possible, delaying the full access to the information of the members and organisations of the public together formed essential parts of the overall strategy of the Hungarian Government to exclude any meaningful social discussions on determining the way the nation will develop its energy resources in the coming at least half a century.

VI. Use of domestic remedies or other international procedures

(*Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:*
If no domestic procedures have been invoked, indicate why not:)

As it is to be seen from the description of the case the Complainant has used all the relevant available remedies: first and second instance court procedures and the procedure of the national data protection body, too and also the Office of the Ombudsman for Future Generations, as well as the Constitutional Court[3]. Almost all of these remedies turned out formally successful finally, but their actual implementation failed. In addition to that, the major infringement of the Aarhus Convention, the tremendous delay in serving the information requests in a matter that has primarily importance of the whole country could not be in itself complained at any authorities. In all the cases when the Energiaklub started to consider using Court bum bailiff's procedure the wielders of the state data started to give out some information, usually all the times only piece by piece. In principle, the Constitutional Court could have been requested again to examine the major structural issues of the case under the auspices of such structural organization principles of the State as rule of law, but in 2010 the Parliament has changed the Act on Constitutional Court and the previously existing *action popularis* was abolished – hence only the Ombudsman or the Government itself could further a complaint of a citizen or an NGO to the Constitutional Court, solely based on their discretionary

[3] The Energiaklub submitted the case of the 2009 Parliamentary Decision to the Constitutional Court but this body has declined the complaint without entering into its merit.

power. Taking into consideration the extremely long (not seldom 4-5 year) and circumstantial process of the Constitutional Court, this legal remedy seemed to be a non-viable solution.

VII. Confidentiality

The Complaints request no confidentiality in this case.

VIII. Supporting documentation

(*copies, not originals*)

- Annex1: Data Protection Act (full text in PDF format)
- Annex2-3: relevant paragraphs of Act CVI of 2007
- Annex4: relevant paragraphs of Act XXXVIII of 1992
- Annex5-6: the 2008 and 2009 Parliamentary Decisions
- Annex7: the whole correspondence under Point2
- Annex8: the whole text of the Capitol City Court sentence
- Annex9: the whole correspondence under Point3
- Annex10: Freedom of Information Act (full text in PDF)
- Annex11: relevant paragraph from Act XLIII of 2010
- Annex12: the whole text of the Environmental Code (full text in PDF)

IX. Summary

(*Attach a two to three-page summary of all the relevant facts of your communication*)

The building of a new nuclear power plant at Paks has been a persistent issue in Hungary since 2007, yet, only little information has been leaking out about the details of the decision-making procedure. The investment of more than 10 billions of Euros would determine Hungary's energy policy and economy for decades. If ever built, the reactors will operate until 2075. Meanwhile, essential questions are not answered. It has never been investigated whether that surplus energy is needed at all in the Hungarian energy system. The public has no information about whether there are adequate environmental, social, economic and professional grounds for this volume of nuclear expansion, nor has a strategic environmental examination been conducted about the investment.

The decision-making process has not been transparent at all. Information only became available through court cases, and with tremendous time delay, when the acquired information was no longer relevant. Public involvement in the decision-making procedure never happened, not at any level. While it was always communicated that the new reactor project would be carried out by the Hungarian electricity company MVM, and there would be a tender process, all of a

sudden the Hungarian government in early 2014 has signed with the Russian Company Rosatom two contracts on building and financing the reactors.
During the course of the decision making process Energiaklub has been trying to get information from the Company and the Government, and also communicated its questions and concerns about the new reactors. However, these initiatives were neither considered, taken into account, nor answered at any stage of the process. The effort of Energiaklub to persuade the concerned parties (i.e. MVM and the Hungarian Government) to initiate meaningful public discussions has been completely ignored. Although both the MVM and the Company and the representatives of the involved ministries took part in a roundtable procedure between 2009 and 2012, together with Energiaklub, Greenpeace, the Regional Environmental Center, the Office of the Ombudsman of the Future Generations, no meaningful exchange of information, neither any substantial general agreement has been achieved on the form and content of the information to be extended to the public in nuclear energy issues.
The formal legal procedures initiated by the Energiaklub in connection with the Company, the MVM and the department in the Ministry of National Development responsible for energy issues were similarly unsuccessful in essence. The same is true in respect to the strategic decision-making procedures of preparation of the relevant plans, namely the preparation of the 2008 decision on national energy planning and the preparation of the 2009 plan that has led to the commitment of Hungary to the nuclear energy sources on the expense of any other alternative solutions such as renewable energy and energy saving. The legal measures taken by the Hungarian Governments between 2008 and 2013 has proven again that they had no real intention to involve the environmental NGOs, independent energy expert groups or the general public into the decision-making process on the energy future of the country.
The primary tactics of the wielders of the relevant data was quite simple: raising new and new legal and factual excuses; at some stages giving out some information piece by piece with significant delay; and only by the time they became less then relevant for the major issues at stake in the ongoing decision-making procedures; and also making the civil partners spend their scarce resources on long legal disputes and legal remedies in several rounds for three years until the final decision became irreversible. In terms of the Aarhus Convention, the major infringement of the Hungarian Party in the Paks case stands in Article 4(2), the lack of timely information servicing, actually extending the time frames determined in Article 4(2) by 10-15 times. The data wielders in this case used substantial legal arguments, too, in connection with Article 4(3)a and 4(3)c and kept repeating them in their correspondence with the data requesters notwithstanding that the courts in the procedures of legal remedies of this case, as well as relevant earlier court decisions made clear that in such cases these exemptions shall not prevail. As the Capitol City Court has pointed out: this behaviour was not in good faith and was against the will of the national and international legislators on the issue of access to environmental information.
These infringements of the information rights in the relevant national laws and the Aarhus Convention were in close connection with the failure of the Hungarian Party to fulfil her responsibilities under Article 5(7)a and Article 7 of the Convention. No publication of the facts and analyses of facts undoubtedly relevant and important in framing a major environmental policy proposal took place in connection with the long run energy policy of the country, namely the extension of the capacities of the Paks nuclear power plant. Neither endeavoured the

Hungarian Government and the bodies that perform planning activities on behalf of it to provide opportunities for public participation in the preparation of such a major policy decision with highly significant environmental consequences.
The mounting importance of planning a high capacity nuclear power plant for a country makes any small mistakes unforgivable in the technical details, but also in the related social and environmental matters, therefore the country concerned shall commit everything to prevent those. One of the best guarantees of avoiding fatal mistakes is the widest possible social and professional control of the decision-making procedures from the very beginning of the emergence of the idea through the realisation of the project up to the latest measures taken in order to deposit the nuclear wastes as safely as possible. Every opinion counts, especially if it comes from unbiased, impartial sources as well as from sources representing other interests than the nuclear energy lobby of the country. Hungary has abandoned these chances of safeguarding her decision-making procedures. Therefore, in harmony with Article 36-37 of the Decision I/7 of the Meeting of the Parties[4] We ask the Compliance Committee, if applicable, to make recommendations to the Party concerned and also request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy. In that regrettable case when the Hungarian Party did not agree in these measures, we ask the Committee to forward such suggestions to the following Meeting of the Parties and meanwhile as a pending decision, following consultations with the Party concerned, provide advice and facilitate assistance to the Hungarian Party regarding the implementation of the Convention.

X. Signature

11 June, 2014.

Ada Ámon
director
Energiaklub

Zsolt Szegfalvi
director
Hungarian Greenpeace

[4] Decision I/7 on review of compliance adopted at the first meeting of the Parties held in Lucca, Italy, on 21-23 October, 2002